

## KCSO Internal Investigation Process

1. Complaint received by KCSO.
  - a. Complaints are routed to IIU.
2. Complaint is evaluated for acceptance
  - a. Criteria for acceptance of complaints:
    - i. Event occurred within past 30 days unless:
      1. criminal violation within statute of limitations
      2. reasonable justification for delay in making complaint
    - ii. Not from a 3<sup>rd</sup> party, unless:
      1. parent or guardian making a complaint on behalf of a minor
      2. complaint from witness of use of force
      3. allegation is of "serious misconduct"<sup>1</sup> of GOM (General Orders Manual)
      4. allegation against former employee
  - b. Once accepted, IIU logs in complaint. IIU does a preliminary investigation if necessary to classify complaint to determine whether it will be. 3.01.075
    - i. If complaint is an issue that is not a "Topic of investigation" per GOM 3.01.025, process ends with response to complainant.<sup>2</sup>
    - ii. If it is a Topic of Investigation, investigation continues.
3. Complaint is accepted. IIU determines whether the complaint should be handled in IIU or sent to a supervisor.<sup>3</sup> 3.01.035
  - a. Allegations of minor infractions are sent to a supervisor. Examples of minor infractions include:
    - i. Tardiness
    - ii. Uniform violations or personal appearance infractions
    - iii. Minor omissions in duties
  - b. If sent to a supervisor

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<sup>1</sup> **Serious misconduct** includes allegations that could be cause for dismissal including: false reports, dishonesty, criminal conduct, taking/giving a bribe, inducing someone to commit a crime, failure to cooperate in investigation, conviction of crime precluding possession of a firearm, discrimination, harassment. **Misconduct** includes all other violations.

<sup>2</sup> An example of a citizen concern that would be rejected: an objection to a citation because the citizen doesn't agree with the law that resulted in an arrest, infraction or citation (e.g. seatbelt law, mandatory DV arrest requirement).

<sup>3</sup> Complaints against IIU personnel go directly to the sheriff.

- i. no complaint report required.
- ii. Should be completed within 30 days
- c. All other allegations are handled in IIU

4. Process for investigation:

- a. Member is notified with Form A-150.
- b. Accused is given enough information to reasonably apprise the member of what the allegations are what information is needed. Accused is not given information outside of what is contained in the complaint notification.
- c. The investigator gathers evidence
  - i. The investigator may submit written questions to the accused.
  - ii. Gathers documentary evidence
  - iii. Interviews witnesses
    - 1. interviews should be tape recorded
    - 2. When witness is interviewed, he or she will be given "Garrity" admonishment which informs the accused that he or she is required to answer, but answers will not be used in a criminal case.<sup>4</sup>
    - 3. Any commissioned member interviewed is given the "Police Officer Bill of Rights."
    - 4. All department members may have representation at their interview.
    - 5. The scope of the interview can only relate to the specific allegations in the complaint
    - 6. Witnesses may have a copy of their statement
- d. Investigator evaluates evidence gathered in the case.
- e. Investigator writes report which classifies the complaint into one of the following categories:
  - 1. **unfounded** – the allegation is not factual and/or the incident did not occur as described
  - 2. **exonerated** – the alleged incident occurred, but was lawful and proper
  - 3. **non-sustained** – there is insufficient factual evidence either to prove or disprove the allegation
  - 4. **sustained** – the allegation is supported by sufficient factual evidence and was a violation of policy

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<sup>4</sup> See information regarding Garrity warnings.

5. **undetermined** – the finding does not fit within the above categories. This may involve the following:

- a. complainant withdraws the complaint
- b. the complainant cannot be located
- c. the complainant is uncooperative
- d. The accused member leaves KCSO before the conclusion of the investigation and the investigator cannot classify the complaint
- e. HOWEVER – if enough information has been collected to classify the complaint, the “undetermined” classification will not be used.

ii. The investigator recommends a factual finding, but does not recommend discipline. 3.01.175

5. Standard of proof:

- a. In cases which allege criminal or serious and there is a likelihood of demotion or termination, the standard of proof is **“clear and convincing.”**
- b. In all other cases it is a **“preponderance of the evidence.”**

6. Process after complaint is classified:

- a. **IIU commander** reviews for adherence to process and accepts investigation or sends it back for further work.
- b. Investigation is forwarded to the employee’s precinct or section commander. Employee is notified that complaint is completed and is being reviewed.
- c. The **Precinct or section commander** reviews the complaint and:
  - i. Sends back to IIU if necessary for additional investigation
  - ii. Ensures that all allegations identified
  - iii. Determination classifications are appropriate
  - iv. Recommends discipline if appropriate<sup>5</sup>
  - v. Forwards investigation to division chief
- d. The **Division Chief** shall
  - i. Review the investigation and make recommendations
  - ii. Return the investigation to the IIU commander, who will have it reviewed by the Sheriff.

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<sup>5</sup> Disciplinary recommendations should be corrective and not punitive and based on: the seriousness of the sustained misconduct, complaint history, likelihood that employee will repeat behavior.

- e. The **Sheriff** shall:
  - i. Review investigation
  - ii. Send back for more investigation, or
  - iii. Change or accept findings or decisions.
  - iv. Notify member of recommendations or discipline
  - v. Conduct Loudermill hearing and after hearing employee comments, make final decision on discipline

7. General provisions

- a. Investigations confidential while in process
- b. The only representation the accused may have in a non-criminal investigation is from the Guild or union. 3.01.100
- c. All department members are required to cooperate with the investigation. 3.01.095
- d. No financial disclosure required by member unless obtained through criminal investigation or subpoena. 3.01.120
- e. All investigations concluded within 30 days unless accused notified.
- f. All disciplinary actions except for oral reprimands will be approved by the Sheriff.
- g. Discipline should be corrective and not punitive.

8. Allegations of Criminal Conduct:

- a. If employee arrested/cited in KCSO jurisdiction, employee is treated like any other citizen.
- b. If employee arrested or the department receives other notice of alleged criminal activity, the appropriate Division Chief is immediately notified.
- c. Completed criminal investigation should go to the prosecutor for a charging decision prior to any IIU investigation. 3.01.210
- d. After charging decision is made, IIU begins the usual investigation process.